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USCG Docket No. USCG-2003-14472 - 51
MARAD Docket No. MARAD-2003-15171 - 26
Comments of Nabors US Finance LLC on U.S. Coast Guard/MARAD Notice of Proposed Rulemaking, 69 Fed. Reg. 5403 (Feb. 4, 2004)

Dear Sir or Madam:

Please accept for filing the following comments of Nabors US Finance LLC ("Nabors Finance") on the U.S. Coast Guard and Maritime Administration ("MARAD") Notice of Proposed Rulemaking, 69 Fed. Reg. 5403 (Feb. 4, 2004), to amend 46 CFR Part 67.

For reasons stated below, we are also commenting on one issue raised for the first time in the notice of final rulemaking published at 69 Fed. Reg. 5390 (Feb. 4, 2004) to amend 46 CFR Part 67. The final rulemaking includes substantive changes from the proposed rulemaking which were not subject to notice and comment (see our comments infra on the final rulemaking). Accordingly, we fully reserve our right to seek judicial review of the final rulemaking.

Executive Summary

The stated purpose of the proposed rulemaking is to limit or prohibit charter back agreements between bareboat charters and affiliates of owners in transactions under 46 U.S.C. § 12106(e), added by Congress in 1996 . The proposed rule would also limit the continued effectiveness of any transactions previously approved by the Coast Guard to three years, a so-called grandfather provision. It is stated that such policy changes are necessary in order to conform policy under the 1996 amendments to the purposes of the Jones Act. The proposed rulemaking, taken together with changes made in a final rule adopted by the Coast Guard on February 4, 2004, represents a wholesale change of policy from that reflected by the statute, the Coast Guard's regulations and the manner in which they were administered in 2002. While these rule changes purport to be general in nature, it appears that their true purpose is to revisit and possibly to invalidate a transaction by Nabors Finance which was expressly authorized by the Coast Guard in 2002. Nonetheless, the Coast Guard now proposes to invalidate that transaction, through the proposed rulemaking, despite the absence of any subsequent changes in the law or the circumstances of the transaction.

As set forth herein, this proposed agency action exceeds statutory authority and is not rationally based. Agencies lack legal authority to change unambiguous legislation. Moreover, the Coast Guard's surprising reversal will result in a taking for which the United States will be required to pay just compensation. The proposed three-year grand fathering period will not prevent economic losses incurred as a result of adoption of the proposed rulemaking.

The supposed policy bases for the proposed rulemaking are fallacious. Transactions consistent with the clear requirements of the governing legislation have not resulted in foreign control of the coastwise trade. At the same time, the proposed rulemaking does nothing realistically to prevent such a supposed threat. Therefore, the true purpose of the proposed rulemaking is manifest: to drive a legitimate domestic shipper out of the coastwise trade at the behest of its competitors. For the Coast Guard to facilitate this strategy is an abuse of administrative authority.

Accordingly, the proposed rulemaking should be rejected in its entirety.

Moreover, the Coast Guard has interjected this same issue into final rulemaking promulgated on February 4, 2004. This rulemaking inserts a condition limiting transactions under the 1996 legislation to those with a "financial component." This, too, is an abuse of agency authority. Nothing in the plain language of the 1996 amendments supports such a limitation. Also, the inclusion of this condition in the final rulemaking is procedurally invalid because it occurred without the required notice and comment.

Accordingly, the financial component limitation in the final rulemaking should be repealed.

I. Comments on Proposed Rulemaking

Nabors Industries Ltd. ("Nabors Industries"), the ultimate parent company of Nabors Finance, is a worldwide, diversified oilfield service and drilling company. Nabors Industries presently has nearly 11,000 employees in the United States, having added approximately 2,200 U.S. employees since the date of the reorganization. Nabors Industries is traded publicly on the AMEX, and more than 75% of its stock is owned by U.S. citizens.

Nabors Industries also markets a U.S. flag fleet of vessels in the coastwise trade, owned by Nabors Finance, and in which it has invested $160 million. Those vessels represent a small fraction (significantly less than 5%) of the market for Gulf of Mexico offshore supply vessels of similar size.

Nabors Finance opposes the proposed rulemaking and urges the Coast Guard and MARAD not to adopt the proposed rules in any form for the reasons set forth below.

Although our comments respond to the supposed policy arguments underlying the proposed rulemaking, it is clear that the proposed rulemaking targets Nabors Industries in response to its 2002 inversion transaction. Accordingly, a brief description of the key facts in that transaction is appropriate.

A. Factual Background

In order to obtain certain benefits which are permissible under existing tax laws, the parent company of Nabors Finance effected a restructuring in June 2002, effectively moving its jurisdiction of incorporation to Bermuda. Nabors Industries, Inc. restructured under a new Bermuda holding company, Nabors Industries Ltd., but retained ownership of its U.S. affiliates that own vessels subject to the Jones Act.

Just as before this restructuring, Nabors Industries conducts its business in the United States through U.S. subsidiaries, which are fully subject to U.S. taxation. And just as before the restructuring, Nabors Industries' ultimate beneficial owners (its shareholders) continue to be predominantly U.S. citizens (more than 75% U.S. owned, both before and after the reorganization). The restructuring fully complied with all U.S. laws, and Nabors Industries shareholders paid a substantial amount of U.S. income tax in connection with the reorganization.

Furthermore, before that transaction was effectuated, Nabors Finance voluntarily approached the Coast Guard and made full disclosure of what it was proposing to do. As explained in more detail in the attached appendix, Nabors Finance asked for the Coast Guard's concurrence that the proposed structure would comply with 46 U.S.C. § 12106(e), so that the U.S. flag status and coastwise trading endorsements of the vessels would not be adversely affected. Nabors Finance provided to the Coast Guard copies of the proposed bareboat and time charters. Nabors Finance had been informed by the Coast Guard that it would apply the standards in its proposed rule regarding Section 12106(e) (published May 2, 2001), and the application therefore followed the requirements in the proposed rule.

The Coast Guard fully reviewed the proposed structure, and required certain changes to be made to various agreements in order to satisfy the statutory requirements. The Coast Guard concluded, in a letter dated March 20, 2002, "that the bareboat charter, with the change made to the time charter as agreed, constitutes a bona fide bareboat charter as required under the Act."

Thus, after full disclosure of the planned reorganization, detailed submissions by Nabors Finance, and full Coast Guard review of relevant agreements, the Coast Guard, by letter dated June 20, 2002, approved all of the charters filed and issued the requested documentation.

Now, nearly two years after the Coast Guard reviewed and approved the proposed transaction, which was entered into in reliance upon such approval, the agency has adopted and proposed rules which would effectively invalidate Nabors Finance's transactions. The proposed grandfather provision in the notice of proposed rulemaking is inadequate to prevent Nabors Finance from incurring significant economic losses as a result of the agencies' reversal of position on the interpretation of the 1996 amendments, Pub.L. No. 104-324, § 1113.

B. Legal Arguments

1. The Agencies Lack Statutory Authority for the Proposed Rulemaking

As described in more detail below, the 1996 amendments do not provide the agencies with the authority to promulgate the proposed rules. The statute requires only that a vessel be demise chartered to a person who certifies that it is a citizen of the United States under Section 2 of the Shipping Act of 1916. The statute does not impose any limitations as to the identity of the person with which the demise charterer may contract for employment of the vessel. Agency rulemaking can clarify but cannot impose new substantive requirements not included in the original statute. See Food & Drug Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 125-26 (2000).

a. The Proposed Rulemaking is Contrary to the Intent of the 1996 Amendments As Made Clear From the Express Language Used in the Legislation

In the 1996 amendments, Congress set forth clear and straightforward requirements for bareboat charters by U.S. citizens. Time charters to foreign entities were common at the time. Yet Congress made no provision limiting or regulating such practice. The words Congress used should be interpreted in the context of commonly accepted principles of maritime law - the context in which the legislation was enacted. The interpretation of the 1996 amendments reflected in the proposed rulemaking is irrational and defies the express language of that legislation.

The proposed regulations reflect an apparent concern that a time charter back will permit evasion of the statutory scheme which relies upon bareboat charters held by U.S. citizens to ensure compliance with Jones Act objectives. This concern is misplaced. Congress used well understood and clearly defined maritime terms in the 1996 amendments which do not allow for evasion of the requirements for control of the coastwise trade by U.S. citizens. Accordingly, the proposed regulations are unnecessary and unduly restrictive.

A demise charter requires that the owner must relinquish control of the vessel to the demisee: "To create a demise the owner of the vessel must completely and exclusively relinquish possession, command, and navigation thereof to the demisee." Guzman v. Pucharilo, 369 U.S. 700 (1962). Under well established principles of maritime law a demise charter shifts the possession and control of the vessel from its owner to the demisee. Gilmore & Black, The Law of Admiralty, 238-40 (2d ed. 1975). "If control of the vessel itself is surrendered to the charterer, so that the master is his man and the ship's people are his people, then we have to do with a demise . . . ." Id. In fact the demise charterer becomes "the owner of the vessel pro hac vice." Id. Therefore, as long as there is a bona fide demise charter, every aspect of the control, possession, and command of the vessel during the period of the charter is in the demisee: "[T]he principal interests the shipowner has are in receiving the agreed hire and getting the vessel back at the end of the term." Id.

Apparently, the agencies have come to believe that a charter back could somehow circumvent these well established bareboat charter principles. However, the express language of the 1996 amendments employing these well-defined terms does not prohibit time charter backs. At the time the statute was passed, time charters to foreign entities were common and were subject to regulations promulgated by the Maritime Administration. Nonetheless, Congress included no restrictions on these transactions in the 1996 amendments. The agencies therefore lack the statutory authority to promulgate such a prohibition.

b. The Legislative History of the 1996 Amendments Supports the Plain Meaning of the Statutory Language

Congress considered and <u>rejected</u> a proposed amendment offered during legislative deliberation on the 1996 amendments which could have had the effect of limiting the ability to time charter vessels back to a member of the shipowner's group. By rejecting this amendment Congress undoubtedly intended for the 1996 amendments to apply to any transaction that was consistent with the affirmative requirements set forth in the legislation.

The proposed amendment would have required the demise charterer to certify "that there are no other agreements, arrangements, or understandings between the vessel owner and demise charterer with respect to the operation and management of the vessel." 141 Cong. Rec. 517348 (daily ed. Nov. 17, 1995). Therefore, the proposed amendment, if adopted, would have arguably prohibited time charter backs.

The Senate accepted this amendment, but it was rejected in conference and the bill was passed without such amendment. As a result Congress did not restrict time charter backs when it enacted the 1996 amendments. The agencies cannot use the proposed regulation, effectively, to enact legislation that Congress rejected.

2. The Proposed Grandfathering is Inadequate to Protect Nabors From the Substantial Loss Caused by the Agencies' Reversal

The Coast Guard's proposed rulemaking and, in certain key respects, the February 4, 2004 final rulemaking, represent a surprising reversal of the agency's position on the 1996 amendments. In June 2002 the Coast Guard approved the Nabors Finance transaction. Between then and the present, Congress has not changed the 1996 amendments and there has been no change in Nabors Finance's conduct. Nonetheless, the Coast Guard now, through various means, apparently proposes to invalidate that approval.

The three-year grandfather period in the proposed regulations cannot adequately compensate Nabors Finance for the economic loss threatened by the proposed rulemaking. If the proposed rules are adopted, Nabors Finance will likely be required to sell the vessels at "distress sale" prices. The proposed grandfathering does not eliminate this economic loss, it merely postpones it. No grandfathering provision that is shorter than the economic life of these ships would be adequate to prevent such losses.

Nabors Finance incurred economic costs in reliance upon the 1996 amendments and the Coast Guard's interpretation of that legislation prior to February 4, 2004. Nabors Finance fully expected that it would be able to utilize the coastwise documented vessels for their full useful life. Nabors Finance has made investments in the Gulf of Mexico offshore supply market in reliance on the Coast Guard's approval of the CODs in 2002. Nabors Finance has also passed upon opportunities to sell the vessels, again in reliance upon the CODs. In addition, the time charterer will lose the commercial value of such charters.

There is ample authority for the proposition that the United States will be required to compensate Nabors Finance for every dollar of loss it suffers relating thereto (at a minimum consisting of the fair market value before February 4, 2004, less actual sales price after adoption of rulemaking). See Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978) (partial regulatory taking is compensable); Yancey v. United States, 915 F.2d 1534 (Fed. Cir. 1990) (misdirected government action constitutes a compensable regulatory taking). Such losses for Nabors Finance alone could be many millions of dollars. The only way to avoid such losses is for the grandfather provision to apply to all transactions made prior to February 4, 2004 in compliance with the 1996 amendments, without limitation as to duration, as provided in the final rule adopted February 4, 2004.

C. Policy Arguments

The agencies have invoked various policy arguments to support the proposed rulemaking. These include ensuring that "U.S. Citizens maintain control over vessels operating in the coastwise trade," "vessels operated in domestic trades must be built in shipyards in the U.S.," and such vessels "must be operated . . . by U.S. Citizens," 69 Fed. Reg. 5403-04. The Coast Guard also states that the proposed rulemaking is required for "U.S. military . . . security." Id. at 5404.

The Nabors Finance transaction does not threaten or impede any of these goals. Nabors Finance vessels remain subject to control by the bareboat charterer, which is a U.S. citizen. The bareboat charterer will operate the vessels. Therefore, the vessels continue to be controlled and operated by U.S. citizens.

All of the vessels granted CODs by the Coast Guard in the 2002 transaction were built in U.S. shipyards.

As U.S. documented vessels, the Nabors Finance vessels remain subject to appropriation in time of war or national emergency.

Accordingly, the proposed rulemaking is irrational and arbitrary. Adopting rules that would prohibit the 2002 transaction will not further a single one of the policy arguments advanced by the agencies.

In addition, the invalidity of the policy arguments unfortunately indicates that the Coast Guard has succumbed to the insistence of competitors that Nabors Finance be driven out of the coastwise trade.

1. The Proposed Rulemaking Is Unnecessary to Prevent Foreign Control of the Coastwise Trade

The proposed rules are not necessary to prevent the parade of horribles advanced by others in the domestic shipping community. The Coast Guard's prior interpretation of the 1996 amendments is not a threat to national security. Any U.S. documented vessel remains subject to appropriation in time of emergency pursuant to existing law regardless of whether it is believed to be subject to "foreign control." Such vessels are also subject at all times to American regulations so long as they fly the U.S. flag. Therefore, even vessels subject to supposed "foreign control" are not operating at a competitive advantage over "domestic" vessels. To be documented, all vessels must still be built in American shipyards and be crewed by American citizens. Therefore, these benefits to American industry and workers remain unaffected by the agencies' correct application of the 1996 amendments to the Nabors Finance transaction.

In fact no issue of foreign control is presented by the Nabors Finance transaction. Notwithstanding the 2002 reorganization, Nabors Industries conducts its business in the United States through U.S. subsidiaries, which are fully subject to U.S. taxation. Subsequent to the restructuring, the ultimate parent of Nabors

Finance, Nabors Industries Ltd., is owned more than 75% by U.S. shareholders. All of the officers and directors/managers of Nabors Finance and at each ownership level up to Nabors Industries are U.S. citizens, while six out of the seven directors of Nabors Industries are U.S. citizens. Hence the Nabors Finance transaction which seems to have prompted this rulemaking presents no valid concerns over foreign control.

The U.S. ships which are the subject of the Nabors Finance transaction are still under U.S. management and the crews still consist of U.S. citizens. For more than 90% of the time that the vessels were utilized subsequent to the 2002 transaction, the Nabors affiliate has sub-time chartered the carrying capacity of the vessels to its customers, which are all unrelated to Nabors.[1] Moreover, the Nabors Finance time charters were reviewed by the Coast Guard in advance of the transaction, and it was determined that such charter arrangements did not undercut the bareboat charters.

2. The Proposed Rules Are Not Designed to Prevent Foreign Control In Any Event

The proposed rulemaking does not prohibit all time charters to foreign citizens, nor in Nabors' view, should it. Even if the proposed rules were adopted, they would not have the effect of keeping vessels certified under the Jones Act "out

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1 Factual support for this statement appears in Nabors Finance's response to the appeal challenging the CODs, filed May 4, 2004.

of foreign hands." If this is considered to be a problem, the proposed rulemaking is defective in that it fails to explain why the Coast Guard would ban some time charters to foreign persons but not all.

To the extent that the Coast Guard has become persuaded that the combination of a foreign owner and a charter back to an affiliate presents a risk of foreign control, the obvious answer is Coast Guard review of the bareboat charter and time charter to satisfy itself that the terms are appropriate to prevent any such problem from occurring. Of course, Nabors Finance obtained such approvals and therefore could not pose any such risk.

3. The Proposed Exception Allowing Charter backs for Proprietary Hire Lacks Rationality

The exception in the proposed rulemaking to allow time charter backs where the cargo is proprietary is irrational and does not salvage the proposal from its failure to comply with the 1996 amendments. This exception is obviously designed to allow one particular foreign company to continue to build and operate oil tanker vessels. Nothing in the legislation allows the agencies to draw such a distinction, and this attempt to favor one foreign company over another makes clear the arbitrary nature of the proposed rule. Congress has evidenced no intent to allow certain charter backs but not others. The proprietary nature of the cargo has no logical impact on whether a time charter back could affect the bona fides of a demise charter.

The reason advanced by proponents of the proprietary cargo distinction is that such cargoes are thought not to affect the competitive environment. If so, the same reasoning should allow Nabors Finance to continue participating in the coastwise trade despite the corporate restructuring of its parent. Vessels owned by Nabors Finance were owned by members of the Nabors group of companies while Nabors Finance was a qualified citizen prior to the June 2002 transaction. These same vessels continue to be owned by Nabors Finance and, through a bareboat charter with a U.S. citizen, are operated in the same way as they have always been. The competitive environment is unaffected by the June 2002 transaction. Thus there is no need for the proposed regulations to prohibit such a transaction. The competitive environment, however, would be negatively affected should the Coast Guard accede to the campaign to eliminate Nabors as a competitor.

4. Nabors' Tax Status Should Not Influence Decisions on Documentation Policy

Nabors Industries conducts its business in the United States through U.S. subsidiaries which are fully subject to U.S. taxation. The Nabors reorganization fully complied with all U.S. laws and Nabors shareholders paid a substantial amount of U.S. income tax in connection with the reorganization. The U.S. citizen which charters and operates Nabors' vessels is subject to U.S. taxation.

It is well beyond the Coast Guard's statutory authority to become involved in issues of corporate tax policy. The inversion tax issue is one which may be addressed by Congress in the context of the Tax Code. That review, rather than the subject rulemaking, is the proper forum for the concerns expressed by some members of the domestic shipping community.

II. Comments on the Final Rulemaking

A. The Requirement of a Financing Component In the Final Rulemaking Was Not Properly Noticed and It Is Inconsistent with the Statute

It is impossible to comment on the proposed rules without also addressing the February 4, 2004 final rulemaking. Together the two regulatory notices form a contradictory, incomprehensible approach which mirrors the agencies' new inconsistent interpretation and administration of the 1996 amendments. For example, the final rulemaking provides unlimited grandfathering for transactions approved prior to February 4, 2004, yet the proposed rules would limit such grandfathering to three years.

Also, the final rules "redefine" the phrase "primarily engaged in leasing or other financing transactions" for the express purpose of "includ[ing] only transactions that have a financing component and exclud[ing] transactions that only include 'leasing.'" 69 Fed. Reg. 5391. This change to the original definition of the relevant phrase was never included in the proposed rulemaking for the February 4, 2004 final rulemaking. Accordingly, no opportunity for public notice and comment was provided. Therefore, the February 4, 2004 final rulemaking violates the Administrative Procedure Act and well established requirements of due process.

At the time Nabors Finance entered the 2002 transaction, Nabors Finance was told by the Coast Guard that the vessel documentation filing would be required to comply with the May 2, 2001 proposed rules, which more closely tracked the statutory requirements. In fact, the 2002 transaction does comply with these proposed regulations. Because the proposed rules fully authorized its transaction, Nabors Finance did not comment on them. However, the final rulemaking is materially inconsistent with the May 2, 2001 proposed rules on significant issues (e.g. adding the requirement of a financing component). Moreover, the Coast Guard adopted these changes in the final rulemaking without providing either advance notice to the public of such changes or the opportunity to comment on them.[2]

Therefore, Nabors Finance fully reserves the right to seek judicial review of the final rulemaking.

The 1996 amendments are specific with respect to the requirements that must be met to obtain a coastwise endorsement for a COD. Congress set forth five separate criteria, but did not include any "financing component" requirement in the statutory language. Rather, the Coast Guard concedes it is adding such a

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2 As Nabors Finance demonstrates in its response to the appeal challenging the CODs, there <u>was</u> a financing component in the 2002 transaction.

requirement with the newly revised definition. The Coast Guard reads the legislative history of the 1996 amendments as intended "to create a vehicle for vessel financing, not an alternative means of vessel ownership," 69 Fed. Reg. 5391. However, agencies are required to adhere to the clear and precise terms of the legislation which expresses no such intent. Resort to legislative history is appropriate only when the language creates an ambiguity or leaves an open issue. Burlington Northern R.R. v. Oklahoma Tax Comm'n, 481 U.S. 454, 461 (1987). Similarly agencies are empowered to fill in gaps or resolve issues only when the statutory language leaves such gaps or opens such issues. The language of the 1996 amendments creates no such circumstance. Accordingly, the Coast Guard is bound by such language. Moreover, nothing in the legislative history supports the Coast Guard adding a new requirement. As a result the Coast Guard lacks authority to exclude certain transactions from the coverage of the 1996 amendments by adopting criteria that Congress did not include in the expressly enacted criteria. The Coast Guard is simply adding language to the statute, which is inappropriate.

Nowhere in the statutory language is there any suggestion that an additional demonstration must be made that there was a financing component to the transaction by which the owner took title to vessels.

The House Conference Report H.R. Rep. 104-854 at 130-32 states that the principal purpose of the law was to expand the sources of capital available.

From this statement, the Coast Guard discerns an intent on Congress' part "to encourage lease financing, not simply 'leasing.'"

As an initial matter, the Supreme Court has held on numerous occasions that the legislative history of a statute is an extremely weak tool for use in interpreting a statute, and certainly cannot be used to contradict the plain meaning of the statutory language or to add requirements that are not included in the statutory language itself. See, e.g. West Virginia University Hospitals, Inc. v. Casey, 499 U.S. 83, 98-99 (1991); United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241 (1989). As a result, the Coast Guard cannot rely on the House Conference Report to add a requirement that is not included in the statute itself.

Furthermore, even if the House Conference Report were relevant, it does not indicate that Congress intended to impose the requirement included in the final rulemaking. The conference report does not say that Congress intended such a requirement for the owners of the vessels. Indeed, the purpose of the statute is to make lease financing available to the lessees, or operators of the vessels, and the financing is accomplished from their perspective by entering into a charter or other lease for a vessel, regardless of how the owner finances its acquisition.

It is not possible to conclude from the general statement in the legislative history that the purpose of the statute is to encourage lease financing for U.S. citizens that Congress intended to impose an absolute requirement that there be a financing component to the transaction in which the lessor takes title to the vessels. Such an illogical a reading is particularly inappropriate given the very limited use that is supposed to be made of legislative history in the first place.

Conclusion

Accordingly, Nabors Finance urges the agencies not to adopt the proposed rulemaking and to amend the final rulemaking dated February 4, 2004 to delete the objectionable provisions identified above.

Respectfully submitted,

NABORS US FINANCE LLC

By: Bruce P. Koch
President

Appendix

Detailed Factual Background of Coast Guard Review and Approval of Nabors' 2002 Transaction

Before engaging in its corporate restructuring, Nabors made a filing by letter, dated January 23, 2002, addressed to Ms. Joan Woody, Chief, Commercial Vessel Section, National Vessel Documentation Center of the Coast Guard ("NVDC"). The letter described the nature of the business of Nabors Industries, Inc. and the ship owning and operating activities of the Nabors group of companies.

The letter disclosed Nabors Industries, Inc.'s intention to incorporate the ultimate parent in Bermuda. As the letter explained, notwithstanding this change in structure, the U.S. citizen shareholding percentage would continue to exceed 75%. Nabors Finance also recognized, however, that having a Bermuda parent would mean it could no longer qualify to document vessels under the Shipping Act of 1916 and the Coast Guard regulations for use in the U.S. coastwise trades. For this reason, Nabors Finance stated in its letter that it intended to file an application under Section 12106(e) of Title 46. Nabors Finance described all of the steps it intended to take as required under Section 12106(e) and the proposed regulations. Ms. Woody of the Coast Guard had specifically advised Nabors Finance to follow the requirements of the proposed regulations published on May 2, 2001.

Copies of the following forms of documents were provided for review and approval:

a. a bareboat charter, between Nabors Finance and Newco, the name given to the section 2 qualified US citizen;

b. a time charter between Newco and Sea Mar Management, Inc., proposed to be the time charterer of the vessels; and

c. an affidavit from the Manager of Nabors Finance, the then anticipated owner of the vessels listed on the Vessel Schedule attached to the affidavit, in the form called for under §67.147(a) of the proposed regulations of May 2, 2001, demonstrating among other things that Nabors Finance was primarily engaged in leasing or other financing transactions.

Nabors was required to make a filing with the Securities and Exchange Commission to accomplish the restructuring in which it had to disclose the material effects of the restructuring on vessel ownership and operations. Therefore, the January 23, 2002 letter requested preliminary approval of the charters and affidavits.

Subsequently, the Coast Guard reviewed the proposed bareboat and time charters and raised with Nabors Finance some concerns the agency had with the forms of agreement. Nabors made changes to address the Coast Guard's concerns.

The Coast Guard concluded, in a letter dated March 20, 2002, "that the bareboat charter, with the change made to the time charter as agreed, constitutes a bona fide bareboat charter as required under the Act."

The application to document the vessels under Section 12106(e) was made by letter, dated June 10, 2002. As noted, Nabors Finance had been informed by the Coast Guard that it would apply the standards in its proposed rule regarding

Section 12106(e), and the application therefore followed the requirements in the proposed rule.

Nabors Finance's application explained the several steps relating to the documentation of the vessels under Section 12106(e):

> a. Nabors Marine, Inc. ("Nabors Marine") would be a wholly-owned subsidiary of Sea Mar Management, Inc. ("SMMI"). All of the shares of SMMI would be owned by Sea Mar Investco LLC ("SMI"), and the membership interests in SMI would be owned 25% by Pool Company, a Delaware corporation ("Pool Company"), an entity within the Nabors group of companies, 74% by a trust whose trustees and beneficiaries all are US citizens and 1% by a US citizen individual. As a result, SMI, SMMI and Nabors Marine would no longer be controlled by anyone within the Nabors Group. A copy of the Unit Purchase Agreement, dated June 7, 2002, between Pool Company and the US citizen purchasers and the Securityholders Agreement, dated June 7, 2002, among SMI, Pool Company and the US citizen purchasers, relating to the above were attached to the June 10, 2002 letter,
>
> b. Nabors Finance would bareboat charter the 33 vessels to SMMI and SMMI would time charter 31 of the vessels to Sea Mar, Inc., an entity within the Nabors Group, and
>
> c. Two of the 33 vessels would be sub-bareboat chartered by SMMI to Nabors Marine and time chartered by Nabors Marine to Rowan Marine Services, Inc., a Texas corporation unrelated to any entity within the Nabors group of companies.

Numerous documents were provided with the June 10, 2002 letter including, for example, the Bareboat Charter between Nabors Finance and SMMI relating to the 33 vessels identified on Schedule A to the Bareboat Charter; the Time Charter between SMMI and Sea Mar relating to the 33 vessels identified on Schedule

A; the Unit Purchase Agreement, between Pool and the US citizen unit purchasers, and the Securityholders Agreement, among SMI, Pool Company and the unit purchasers relating to the sale by Pool Company of 75% of its interest in SMI; an original certification, dated June 7, 2002, in the form of an affidavit, from Nabors Finance as required by section 67.147(a)(1) of the proposed regulations which were published on May 2, 2001 establishing that Nabors Finance was primarily engaged in leasing or other financing; and an original affidavit of US citizenship, each dated June 7, 2002, from each of the Section 2 citizen bareboat charterers of the vessels, SMMI and Nabors Marine, as required by section 67.141(b) of the proposed regulations which requires the affidavit be in the format of form CG-1258, Section G. Immediately following the transfer of its vessels to Nabors Finance and prior to the sale by Pool of 75% of the equity interests in SMI, Nabors Marine was converted to a limited liability company. Moreover, the final executed bareboat and time charters were accompanied by black lined copies to show any variations in the forms of the charters the Coast Guard had approved on March 20, 2002, thus simplifying the review.

The Coast Guard, by letter dated June 20, 2002, approved all of the charters filed and issued the requested documentation.